

1 SB48
2 133693-4
3 By Senators Orr and Holtzclaw
4 RFD: Finance and Taxation General Fund
5 First Read: 07-FEB-12
6 PFD: 10/13/2011

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend Section 40-18-194, Code of Alabama 1975,
12 relating to an income tax capital credit for qualifying
13 projects of new businesses and business expansions; to allow
14 for an extension of the time period in which certain capital
15 credits may be claimed and will also allow the credit to be
16 carried forward from one (1) to four (4) years depending upon
17 the amount of the capital costs of the project.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Section 40-18-194, Code of Alabama 1975,
20 is amended to read as follows:

21 "§40-18-194.

22 "(a) The Legislature recognizes that a substantial
23 number of businesses are organized as limited liability
24 companies, partnerships, and other types of business entities
25 and that certain business entities, organized as corporations,
26 elect to be treated as "S" corporations under federal and

1 state tax laws, and that it is essential that the capital
2 credit amount shall be available on a pass-through basis in
3 the manner hereinafter provided.

4 "(b) Each investing company, or its shareholders,
5 partners, members, owners, or beneficiaries shall be entitled
6 to the capital credit for each tax year of an investing
7 company with respect to which a capital credit is provided
8 pursuant to this article. The capital credit shall be allowed
9 as follows:

10 "(1) The owner of an investing company which is a
11 proprietorship shall receive a credit against the individual
12 income tax levied by Section 40-18-5 that otherwise would be
13 owed to the state in any year by the owner with respect to the
14 income of the investing company generated by or arising out of
15 the qualifying project.

16 "(2) An investing company which is an Alabama C
17 corporation as defined in Section 40-18-160, or which is an
18 Alabama S corporation and which is subject to taxation under
19 Section 40-18-174, or Section 40-18-175, shall receive a
20 credit against the corporate income tax levied by Section
21 40-18-31 or by Section 40-18-174 or Section 40-18-175, that
22 otherwise would be owed to the state in any year by the
23 investing company with respect to the income generated by or
24 arising out of the qualifying project.

25 "(3) The shareholders of an investing company which
26 is an Alabama S corporation as defined in Section 40-18-160,

1 and whose taxable income is subject to determination under
2 Section 40-18-161, each shall receive a credit against the
3 individual income tax levied by Section 40-18-5 that otherwise
4 would be owed to the state in any year by each shareholder of
5 the investing company with respect to income of the investing
6 company generated by or arising out of the qualifying project.

7 "(4) The partners, members, or owners of an
8 investing company, the income of which is subject to taxation
9 under Section 40-18-24, each shall receive a credit against
10 the corporate income tax levied by Section 40-18-31, or
11 against the individual income tax levied by Section 40-18-5,
12 whichever is applicable to each such partner, member, or owner
13 that otherwise would be owed to the state in any year by each
14 partner, member, or owner of the investing company with
15 respect to income of the investing company generated by or
16 arising out of the qualifying project.

17 "(5) An investing company which is a trust or estate
18 having income subject to taxation under Section 40-18-25(c)
19 shall receive a credit against the income tax levied by
20 Section 40-18-5 that otherwise would be owed to the state in
21 any year by the investing company on the income generated by
22 or arising out of the qualifying project.

23 "(6) The beneficiaries of an investing company which
24 is a trust or estate the income of which is subject to
25 taxation under Section 40-18-25(d) each shall receive a credit
26 against the corporate income tax levied by Section 40-18-31,

1 or against the individual income tax levied by Section
2 40-18-5, whichever is applicable to each such beneficiary,
3 that otherwise would be owed to the state in any year by each
4 beneficiary of the investing company with respect to income of
5 the investing company generated by or arising out of the
6 qualifying project.

7 "(7) A shareholder, partner, member, owner, or
8 beneficiary which is eligible to receive a credit under
9 subdivision (3), (4), or (6) of this subsection and which is
10 an Alabama S corporation, or which has income which is subject
11 to taxation under Section 40-18-24 or Section 40-18-25(d),
12 solely for purposes of the application of this subsection,
13 shall be treated as though the shareholder, partner, member,
14 owner, or beneficiary were also an investing company.

15 "(8)a. An investing company which is a financial
16 institution as defined in Section 40-16-1 shall receive a
17 credit against the financial institution excise tax levied by
18 Section 40-16-4 that otherwise would be owed to the state in
19 any year by the investing company with respect to the income
20 generated by or arising out of the qualifying project which is
21 a data processing center, is a headquarters facility, or is
22 described in the 2007 North American Industry Classification
23 System National Industry 561422 (other than establishments
24 that originate telephone calls). To receive the capital credit
25 authorized by this paragraph (8)a., Section 40-18-193 shall be
26 complied with. Further, the financial institution must be the

1 investing company or it must own, directly or indirectly, at
2 least 50 percent of the investing company. If the financial
3 institution is a shareholder, partner, member, owner, or
4 beneficiary of an investing company which is not itself
5 subject to taxation, the financial institution shall be
6 entitled to a capital credit corresponding to its relative
7 ownership interest in the investing company, subject to the 50
8 percent ownership requirement of the immediately preceding
9 sentence.

10 "b. In making the report required by Section
11 40-16-6(d), a financial institution receiving the capital
12 credit authorized in paragraph (8)a. shall not take into
13 account the qualifying project.

14 "(9) The capital credit allowed under this
15 subsection for any tax year of an investing company shall not
16 exceed the aggregate amount which otherwise would be due from
17 the investing company, its shareholders, partners, members,
18 owners, or beneficiaries to the state in tax with respect to
19 the income of the investing company generated by or arising
20 out of the qualifying project, determined after the
21 application of all other deductions, losses, or credits
22 permitted under Titles 40 and 41, for the taxable year, and
23 determined by applying the maximum rate applicable to
24 individuals under Section 40-18-5, or the rate applicable to
25 corporations under Section 40-18-31, or the rate applicable to
26 financial institutions under Section 40-16-4, as the case may

1 be. Notwithstanding the foregoing, the capital credit allowed
2 under this subsection shall not exceed 60 percent of the
3 aggregate amount which would otherwise be due from the
4 investing company, in the case of a qualifying project for the
5 production of electricity from coal gasification or
6 liquefaction or advanced fossil-based generation, as such
7 terms are defined in Section 40-18-1, or hydropower
8 production, or 80 percent of the aggregate amount which would
9 otherwise be due, in the case of a qualifying project
10 described in Section 40-18-190(a)(13)e which produces
11 electricity from any other type of alternative energy
12 resource.

13 "(10) a. In Except as provided in subsection b.
14 below, in no event may any amount described in this subsection
15 be carried forward or back by any investing company,
16 shareholders, partners, members, owners, or beneficiaries with
17 respect to a prior or subsequent year.

18 "b. If the qualifying project has capital costs of
19 at least one hundred million dollars and provides not less
20 than one hundred jobs for new employees, the capital credit
21 may be carried forward for a maximum of four (4) taxable
22 years, depending on the amount of capital costs. Amounts
23 described in this subsection may only be carried forward by
24 any investing company, shareholders, partners, members,
25 owners, or beneficiaries as follows:

1 "(1) If the capital costs are at least four hundred
2 million dollars, the capital credit may be carried forward for
3 a maximum of four (4) taxable years.

4 "(2) If the capital costs are at least three hundred
5 million dollars but less than four hundred million dollars,
6 the capital credit may be carried forward for a maximum of
7 three (3) taxable years.

8 "(3) If the capital costs are at least two hundred
9 million dollars but less than three hundred million dollars,
10 the capital credit may be carried forward for a maximum of two
11 (2) taxable years.

12 "(4) If the capital costs are at least one hundred
13 million dollars but less than two hundred million dollars, the
14 capital credit may be carried forward for a maximum of one (1)
15 taxable year.

16 "(5) If the capital costs are less than one hundred
17 million dollars, the capital credit may not be carried
18 forward.

19 "c. Any provisions of the law to the contrary
20 notwithstanding any entity described in subsection b. may
21 delay the initial utilization of the capital credit for up to
22 three years after the qualifying project is placed in service,
23 after which time the twenty year period for the credit shall
24 begin.

25 "(11) Any shareholder, partner, member, owner, or
26 beneficiary of an investing company may elect annually to use

1 his or her allowable portion of the tax credit created by this
2 article as a nonrefundable estimated tax payment against his
3 or her individual income tax liability. If a taxpayer makes an
4 annual election to use the aforementioned credit as a
5 nonrefundable estimated payment, the taxpayer shall compute
6 the amount of the credit as though it were a credit, subject
7 to all the requirements and limitations provided by law for
8 the credit, but shall use the amount computed as a
9 nonrefundable estimated payment and shall not use the same
10 amount as a credit. In no event shall this provision be
11 construed to allow the credit or nonrefundable estimated tax
12 payment to expand the 20-year limitation of the credit or
13 estimated tax payment. In no event shall a credit used as
14 nonrefundable estimated payment exceed the amount that would
15 be available if the credit were not used as a nonrefundable
16 estimate payment.

17 "(c) The amendments made to this section by Act
18 2008-275 shall be effective for tax years and periods
19 beginning after December 31, 2011."

20 Section 2. This act shall become effective for all
21 qualifying projects for which a project agreement has been
22 entered into prior to December 31, 2011, but which have not
23 been placed in service as of December 31, 2011, and for all
24 qualifying projects for which a project agreement is entered
25 into on or after December 31, 2011, following its passage and
26 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to
the Senate committee on Finance and Taxation Gen-
eral Fund 07-FEB-12

Read for the second time and placed on
the calendar..... 08-FEB-12

Read for the third time and passed as
amended 14-FEB-12

Yeas 32
Nays 0

Patrick Harris
Secretary